ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JONATHON SEE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0606-CR-538
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0009-CF-274

February 26, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Appellant-Defendant Jonathon See ("See") challenges the Madison Superior Court's revocation of his probation, claiming that the State failed to present sufficient evidence that he had violated the terms of his probation. Concluding that there was sufficient evidence to support the trial court's probation revocation, we affirm.

Facts and Procedural History

The facts most favorable to the probation court's judgment reveal that on February 5, 2001, See pled guilty to Class D felony criminal recklessness, Class D felony battery by bodily waste, Class B misdemeanor public intoxication, and Class D misdemeanor disorderly conduct. On March 5, 2001, See was sentenced to a total of three years, with two suspended, and was ordered to be placed on probation for two years after his release. This sentence was ordered to run consecutive to another sentence in a different cause.

In January of 2006, See was released from jail. On April 19, 2006, the State filed a Notice of Violation of Probation, Appellant's App. p. 34, and on May 8, 2006, a probation revocation evidentiary hearing was held where the following facts were established.

On April 13, 2006, at approximately 5:00 a.m., Officer Joseph Rodney ("Officer Rodney") responded to a dispatch in Anderson, Indiana, regarding a suspicious person who had knocked on a homeowner's door and wanted a ride. Id. at 50. After arriving on the scene, Officer Rodney came into contact with See, who explained that he had knocked on the homeowner's door because he "had got [sic] his vehicle stuck in the field and he was trying to get a ride." Id. According to Officer Rodney, See further explained that he ended up in the field because while driving the vehicle, he had made a wrong turn.

Id. See also told Officer Rodney that he had been trying to get out of the field for approximately three hours, id. at 51, 53, and that he had consumed a couple of beers earlier in the evening. Id. at 56.

At the time Officer Rodney encountered See, Officer Rodney observed that See had a "strong odor of an alcoholic beverage coming from his person[,]" that his speech was slurred and his balance was unsteady. Id. at 52. See was arrested for public intoxication and upon arriving at jail, was given a portable breath test. See had a blood alcohol content ("BAC") of .16.

At the hearing, See testified that he had consumed "probably six (6) beers." Id. at 63. See also testified that, on the evening prior to his arrest, he had gone to a co-worker's home at 8:00 p.m. and had begun drinking at the coworker's house after curfew at one a.m. the following morning. Id.

At the conclusion of the probation revocation hearing, the trial court found that See had violated his probation and ordered that he serve the suspended portion of his initial sentence at the Department of Correction. In so doing, the court stated:

> The Court finds that the evidence shows by a preponderance that [See] . . . was publicly intoxicated on this particular date. The Court finds from the evidence introduced and from the testimony of the officer and from the statements made by the defendant to the officer at the time that he drove the vehicle there, that he did not abstain from the use of alcoholic beverages, he tested .16, [and] violated his curfew.

Tr. p. 47. Following additional arguments by both the State and See's attorney, the trial court further stated:

> [U]nfortunately the defendant here has almost committed crimes as a violation of his probation that he originally committed to be placed on probation, criminal recklessness, which you might be able to argue that

> driving a car while intoxicated into a field is somewhat reckless and [would] be criminal recklessness because he was driving while intoxicated. He was publicly intoxicated, which he was previously convicted of. Disorderly conduct, which might indicate that he was going door-to-door knocking . . . Some people learn lessons and some don't. I don't think it's a good idea to put a monitor on him to find out where he's going because we could watch him as he's driving down the road in a reckless manner being intoxicated running head on into somebody and . . . kill somebody . . . I'm not gonna [sic] take that chance. He has to go to the Department of Correction for the time that was suspended.

Id. at 52. This appeal ensued.

Discussion and Decision

See argues that the State did not present sufficient evidence to support the revocation of his probation. Specifically, he asserts that the State failed to prove that he was intoxicated and that "he was actually intoxicated at the time he operated his vehicle" and thus revocation of his probation was improper. Br. of Appellant at 7. We disagree.

In addressing See's contention that the evidence was insufficient to support the revocation, we first note that "probation is a favor granted by the State, not a right to which a criminal defendant is entitled." Podlusky v. State, 839 N.E.2d 198, 199-200 (Ind. Ct. App. 2005). A probation revocation hearing is in the nature of a civil proceeding. Whatley v. State, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006). Therefore, an alleged violation of probation only has to be proven by a preponderance of the evidence. Id. When the sufficiency of a factual basis is challenged, we neither weigh the evidence nor judge the credibility of the witnesses. Menifee v. State, 600 N.E.2d 967, 970 (Ind. Ct. App. 1992). Rather, we look to the evidence most favorable to the State, and if there is substantial evidence of probative value to support the trial court's

conclusion that the probationer is guilty of *any* violation, revocation of probation is appropriate. Id.

Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). These restrictions are designed to ensure that the probation serves as a period of genuine rehabilitation and that the public is not harmed by a probationer living within the community. Id. Moreover, the ability to serve a sentence on probation is a "matter of grace" and a "conditional liberty that is a favor, not a right." Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005).

Indiana Code section 35-38-2-3(g) (2004) provides:

> If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:
>
> (1) continue the person on probation, with or without modifying or enlarging the conditions;
>
> (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or,
>
> (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Here, See admitted to violating several terms of his probation, including consuming alcohol and violating his curfew, but nonetheless argues that the trial court abused its discretion when it ordered him to serve the portion of his sentence that was suspended at the time of initial sentencing. Evidence of a single probation violation is sufficient to sustain the revocation of probation. Smith v. State, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000); see also Menifee, 600 N.E.2d at 970. Based on the foregoing, the

court properly concluded that See had violated the terms of his probation by consuming alcohol, violating curfew, and being intoxicated in public. Thus, revocation of his probation was supported by sufficient evidence and therefore proper.

Affirmed.

NAJAM, J., and MAY, J., concur.